

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF MICHIGAN  
3 SOUTHERN DIVISION

4 YOUNG AMERICANS FOR LIBERTY AT  
5 KELLOGG COMMUNITY COLLEGE,  
6 et al.,

7 Plaintiffs,

DOCKET NO. 1:17-cv-58

8 vs.

9 KELLOGG COMMUNITY COLLEGE,  
10 et al.,

11 Defendants.

12  
13 TRANSCRIPT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

14 BEFORE THE HONORABLE ROBERT J. JONKER

15 UNITED STATES DISTRICT JUDGE

16 GRAND RAPIDS, MICHIGAN

17 August 1, 2017

18  
19 Court Reporter: Glenda Trexler  
20 Official Court Reporter  
21 United States District Court  
22 685 Federal Building  
23 110 Michigan Street, N.W.  
24 Grand Rapids, Michigan 49503

25 Proceedings reported by stenotype, transcript produced by  
computer-aided transcription.

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18 \* \* \* \* \*

19 Grand Rapids, Michigan

20 August 1, 2017

21 3:32 p.m.

22 P R O C E E D I N G S

23 *THE COURT:* All right. We're here on the case of the  
24 Young Americans for Liberty against Kellogg Community College.  
25 It's 1:17-cv-58. A hearing on the plaintiffs' motion for

1 preliminary injunction.

2 Let's start with appearances and go from there.

3 *MR. BARHAM:* Your Honor, my name is Travis Barham. I  
4 represent plaintiffs. With me today is Casey Mattox and  
5 Jeshua Lauka.

6 *THE COURT:* Okay. Thank you.

7 *MS. NORRIS:* Megan Norris on behalf of defendants.

8 *THE COURT:* Okay. So we obviously have had your  
9 materials now on file for a while, and both sides have  
10 submitted some declarations or affidavits. So I think we have  
11 a record on which we can proceed today. If it becomes clear  
12 that we need actual testimony to resolve critical factual  
13 disputes, I think that will probably come up in the course of  
14 the argument.

15 What I really want to start with, amongst the  
16 plaintiffs' motion, is just to get a few things from the  
17 defendants' perspective, and then we can go to a more normal  
18 argument.

19 But I'm surprised in a way that Kellogg Community  
20 College wants to defend the current policy on its own written  
21 terms. I mean, the brief, at least as I read it, tries to  
22 defend some of it but also seems to slide by some of the actual  
23 text of the policy and say, "Well, we don't really do it that  
24 way." And it would seem like, to me anyway, to say "Well, on  
25 the one hand our policy says we're content-neutral, can't take

1 content into account, but on the other hand, in order to get  
2 the permit you need to be consistent with the mission of the  
3 university or student group." It's almost in dissidence. I  
4 don't see how you can have no consideration of content if  
5 consistency with mission is one of the requirements.

6 More generally, how a policy that flat-out prohibits  
7 solicitation without prior permit, when solicitation is so  
8 broad as to include pretty much anything students might want to  
9 talk about amongst each other, it strikes me that, you know,  
10 it's got that 1984 aura. You know, it's okay to speak, but  
11 only if the government gives you permission first.

12 And it may be that the parties are divided on much  
13 more fundamental things than that, but I guess at the outset,  
14 what is so important to the defendant about this policy as  
15 opposed to some of the others we've seen? The Grand Valley  
16 policy, for example, most recently changed. That still, of  
17 course, recognizes the defendant's need and right to manage  
18 groups in a way that doesn't put anybody in jeopardy  
19 physically, safety, all that matters. But, seriously, I mean,  
20 do you need this policy to do it? What about this policy do  
21 you see as so important that you don't want to modify it in any  
22 way? So let me start out with that, and then we'll go to more  
23 conventional orders.

24 *MS. NORRIS:* Sure. Certainly, Your Honor. So, first  
25 of all, I believe I said publicly in this court the last time I

1 was here in April, and certainly said repeatedly at the  
2 settlement conference that you directed us to with our request,  
3 the college has never said it refuses to change anything about  
4 the policy. We had an extensive settlement conference. We had  
5 extensive discussions with the magistrate about --

6 *THE COURT:* Right. But I guess -- and I don't need  
7 to know all the details of your settlement. But I guess today  
8 the question is: Do I enjoin your policy as written? That's  
9 what you're talking about. So as a practical matter today you  
10 have to defend that policy.

11 *MS. NORRIS:* So I don't have any problem defending  
12 the policy. I think the question of whether we're willing to  
13 make any changes to the policy is an entirely different  
14 question from whether it's a legal policy.

15 *THE COURT:* Let me ask you questions. How do you  
16 defend the idea that it's content-neutral when consistency with  
17 mission is one of the things that you have to find? How can  
18 you do that without considering content?

19 *MS. NORRIS:* Well, as discussed in many of the  
20 cases --

21 *THE COURT:* Well, how do you do that here? I mean,  
22 the cases go both ways. I mean, I don't see anything that's so  
23 specifically good for you in the case law that -- don't you  
24 just as a practical matter have to consider mission -- or  
25 content if mission consistency is the touchstone?

1           *MS. NORRIS:* No, I don't think that you do.

2           *THE COURT:* How can you do that? How do you know if  
3 it's consistent with the mission if you don't consider content?

4           *MS. NORRIS:* So, for example, if you have a condensed  
5 campus, as Kellogg Community College does, where most of the  
6 student traffic is in a fairly condensed area, and you say our  
7 primary mission is to get students to classes, get students  
8 educated, get students to the offices where they want to get,  
9 you can say we don't want to congest up those areas with group  
10 activities.

11           *THE COURT:* Well, that's different. I mean,  
12 that's -- that's discussing the volume of people, or you can  
13 prohibit people from blocking sidewalks or doorways. But if  
14 you're saying in your policy -- and it seems to say it -- that  
15 to get the permit you have to be consistent with the college's  
16 mission or the mission of a recognized student group, how do  
17 you judge that without looking at the content of what the  
18 speaker wants to say?

19           *MS. NORRIS:* I think I've just given you one example.  
20 I don't think that it matters at all whether it's  
21 American Express coming in to solicit for credit cards --

22           *THE COURT:* All right. But, I mean, if that's your  
23 argument, you're going to lose on that, because --

24           *MS. NORRIS:* I hear you --

25           *THE COURT:* -- because there's no way that I can read

1 that policy fairly and say, "Well, what mission consistency  
2 means is crowd control." I mean, give me a break. There's all  
3 kinds of ways to manage crowd control that don't require you to  
4 say a speaker has to be consistent with the mission of the  
5 university.

6 *MS. NORRIS:* With all due respect, Your Honor, I  
7 agree with you the cases go both ways, and I'm prepared to  
8 address the cases when you want me to do that. But many of the  
9 cases, many of the cases involve a policy that has exactly the  
10 mission language we have, and the reason is that if you're --

11 *THE COURT:* Well, I'm talking about outside --  
12 there's differences as well between outside groups that come  
13 and students who want to speak. Or students who want to  
14 connect up with an organization that wants to speak. And  
15 at least in this case you have existing students who are  
16 interested in this particular speech. So, I mean, I think  
17 you're in the weakest possible position when you're talking  
18 about requiring your students to come forward and restrict  
19 mission. A lot of the cases that are on their surface more  
20 supportive of you are simply applied to outside groups that  
21 don't have any connection to the school through students.

22 *MS. NORRIS:* There certainly is a different standard  
23 for students versus outside groups, I agree with the Court on  
24 that issue. But if an entity is going to declare itself  
25 something other than a traditional public forum like a sidewalk

1 where anybody can walk up and down the street or sit in the  
2 park or wherever, one of the things it has to do, and the cases  
3 regarding universities specifically talk about, is it has to  
4 say we're only going to be a forum for things that are  
5 consistent with our mission. And so that statement is not a  
6 throw-away or a mistaken statement. But that is not to say  
7 that the content or the position taken by the speaker is a  
8 factor that is considered.

9 *THE COURT:* I just don't see logically how you can  
10 possibly judge mission consistency without knowing what the  
11 speaker -- without looking at the content of the speech.  
12 Maybe, as you suggest, you never decline it because of a  
13 speaker content, but on the face of the policy, how do you -- I  
14 just don't understand logically how that can be.

15 *MS. NORRIS:* This particular group was specifically  
16 told that on that day in question they could have permission to  
17 solicit. They chose not to go through the process. But to --  
18 otherwise to have otherwise --

19 *THE COURT:* That gets to the second point, I guess,  
20 which is how can you really defend a policy that says you can't  
21 have any solicitation without prior permission? Why isn't that  
22 just the Orwellian 1984? You know, two students start talking  
23 about Rand Paul and they want to get other students to see  
24 their vision. Technically that falls within your solicitation  
25 policy. You can say, "Well, it really doesn't," but at least



1 the language of the policy covers that. So you'd have no  
2 spontaneous communication at all. And I just find that  
3 astonishing.

4 *MS. NORRIS:* As I've indicated, Your Honor, these  
5 policies have been upheld going back to the Supreme Court  
6 case --

7 *THE COURT:* Well, tell me -- unless you can tell me  
8 there's something that compels me to -- you know, like a  
9 controlling authority, don't talk too much about other cases  
10 right now. How do you defend that? I mean, do you really want  
11 to be in the paper saying "Yeah, we arrest people who pass out  
12 Constitutions on our campus without our prior permission"? I  
13 mean, that's your optics. That's a terrible optical position  
14 for you to be in, isn't it?

15 *MS. NORRIS:* I agree that that's bad publicity for  
16 the college. Absolutely. But that isn't the story.

17 *THE COURT:* Well, I mean, it's certainly the story  
18 the plaintiff tells in their sworn affidavit.

19 *MS. NORRIS:* It is certainly the story --

20 *THE COURT:* And what's wrong with that story? They  
21 were passing out Constitutions without your prior permission  
22 and they got arrested for it.

23 *MS. NORRIS:* They were not just passing out  
24 Constitutions, they were soliciting students, and the college  
25 received a complaint from a student about being solicited.

1           **THE COURT:** All right. I think you've got real  
2 problems trying to defend the policy as written on these facts.  
3 And I don't understand why you want to. That's really what I  
4 wanted to hear at first. You know, because it just seems to me  
5 you invite needless bad publicity.

6           You certainly have, as any school does, the right to  
7 prevent people from blocking the doors and all that sort of  
8 thing, but that's not the way your policy reads to me.  
9 At least on paper.

10           But why don't we hear from the plaintiffs, spend  
11 about 15 minutes summarizing yours. We'll hear from Ms. Norris  
12 for her formal argument in response. And any rebuttal that the  
13 plaintiff has. If each side overall takes about 20 or 25  
14 minutes, I think we can get the focal point of what each side's  
15 positions are and then go from there. Thank you.

16           **MR. BARHAM:** Good afternoon, Your Honor. May it  
17 please the Court. As you mentioned, we're here today on  
18 plaintiffs' motion for preliminary injunction seeking to enjoin  
19 defendants' speech permit and speech zone policies that require  
20 students to get a permit to engage in any expressive  
21 activities. And these policies prohibit students from engaging  
22 in those activities anywhere outdoors. In enforcing those  
23 policies, defendants threatened to arrest Mr. Withers and  
24 arrested Mrs. Gregoire because they stood on a sidewalk,  
25 engaged students in conversation, collected signatures, and

1 handed out copies of the Constitution.

2 In 2012 the University of Cincinnati did something  
3 very similar to another chapter of Young Americans for Liberty,  
4 and when those students also sought to collect signatures the  
5 university restricted those students to one corner of one quad  
6 on campus, required them to get a permit, and threatened to  
7 arrest them if they went anywhere else to exercise their  
8 First Amendment rights.

9 In 2012 the Southern District of Ohio issued a  
10 preliminary injunction prohibiting the university from  
11 requiring students to give that prior notice, prohibiting them  
12 from requiring students to limit their activities to certain  
13 areas of campus, and prohibiting them from imposing any policy  
14 restricting student speech in the outdoor generally accessible  
15 areas of campus unless they could prove it would pass strict  
16 scrutiny.

17 This case involves similar policies and more  
18 egregious facts and, therefore, plaintiffs respectfully request  
19 that this Court do likewise. After all, in a couple of weeks  
20 students, including Mrs. Gregoire, will return to campus. The  
21 policies that led to her arrest remain in effect, curtailing  
22 her ability to recruit students and banning student speech  
23 outdoors.

24 Even after being sued, even after being directed to  
25 policies that would correct the constitutional flaws here, even

1 after we provided them a model policy, and even after a  
2 settlement conference defendants have refused to change these  
3 policies and, therefore, an injunction is necessary.

4 Your Honor, as you have noted, these policies are  
5 inherently content- and viewpoint-based because they require  
6 school officials to assess whether or not speech is consistent  
7 with the mission and purpose of KCC. And one can just look at  
8 the mission and purpose statement to see just how much leeway  
9 there is for viewpoint discrimination. After all defendants  
10 can stop students from speaking if they decide that student  
11 speech does not enrich our community for the lives of  
12 individual learners. They can ban speech if they decide it  
13 does not lead to enhanced employability, if it does not help  
14 students think critically, if it does not demonstrate global  
15 awareness, if it does not promote, support, and enhance student  
16 success. All of these are inherently content- and  
17 viewpoint-based assessments that require university officials  
18 or college officials to look at the content of what students  
19 are saying to determine whether or not it can be allowed on  
20 campus.

21 And, therefore, the empty words that are included in  
22 the policy that the college does not take in considering  
23 content are just that, empty words. And we have evidence here  
24 of how defendants enforce this policy in a content-based way.  
25 They sat there and watched our client speak. They watched them

1 ask questions of students. Questions like "Do you like freedom  
2 and liberty?" And they decided that those questions were  
3 provocative, and because those questions were provocative they  
4 could not be allowed on an open sidewalk on campus.

5 And even just now opposing counsel mentions that this  
6 is content-based enforcement because she mentioned that the  
7 college acted because it received a complaint from students.  
8 Well, the Supreme Court ruled in 1992 that listeners' reaction  
9 to speech is not a content-neutral basis for regulation.

10 And Defendant Hutchinson said that he was acting to  
11 protect certain students from hearing things that he didn't  
12 think they had -- that they felt like they could just walk  
13 past. Well, the Constitution does not empower government  
14 officials to protect people from certain types of speech. The  
15 essence of free speech is that those messages should be allowed  
16 to be promulgated on campus. So there's no way to avoid the  
17 fact that this is a content- and viewpoint-based policy. And,  
18 frankly, that alone is sufficient reason for this Court to  
19 strike down the policy and to issue the requested injunction.

20 And as this Court noted, the policy is an incredibly  
21 broad prior restraint. You cannot engage in any expression on  
22 campus without getting prior permission. That is repeated  
23 at least two or three times in the policy. On page ID 100,  
24 page ID 105, page ID 126 all say that you have to get prior  
25 permission in order to solicit on campus. And the definition

1 of solicitation involves a broad swath of protected classic  
2 forms of protected speech. So it's hard to imagine how  
3 defendants could have written this policy to be any more broad.  
4 There's definite overbreadth problems with this policy.

5           Opposing counsel mentions their concern about crowd  
6 control and congestion. Well, the Williams court dealt with  
7 very similar arguments, and it noted that there was nothing  
8 preventing the college from imposing policies that address that  
9 congestion and traffic concern. If a policy is going to be  
10 narrowly tailored to address traffic, then it needs to target  
11 and eliminate no more than the exact source of the evil it  
12 seeks to remedy. But the problem with the policies here is  
13 that they burden far more speech. Two people standing on a  
14 sidewalk discussing Senator Paul do not block access to  
15 classes. Two people standing on a sidewalk discussing  
16 Senator Paul don't block entrances and exits to buildings. Two  
17 people standing on a campus handing out copies of the  
18 Constitution do not seriously block access to education.  
19 There's no way that one can seriously maintain that that's the  
20 case.

21           So all of that is -- it's almost -- it's almost  
22 hyperbolic, but it's the same kind of argument that the  
23 University of Cincinnati set forward and that did not pass  
24 muster there. It's the same sort of argument that the  
25 university in Roberts versus Haragan set forth, and it didn't

1 pass muster there. So it shouldn't pass muster here either.

2 The policy is overbroad. The policy restricts  
3 student speech all over campus, all over places that are  
4 unquestionably designated public forums for student speech.

5 And none of the cases that defendants cite in their  
6 brief, none of the cases that they allude to here change the  
7 fact that a university campus is a designated public forum for  
8 student speech. Every court that has addressed a speech zone  
9 case dealing with student speech -- not outsider speech but  
10 student speech -- has held that these areas are designated  
11 public forum.

12 In fact, the Williams court makes this very clear,  
13 and it addresses one of the cases that opposing counsel cites  
14 in her brief. The Gilles case. It says "Gilles does not  
15 suggest nor is this court aware of any other precedent  
16 establishing that a public university may constitutionally  
17 designate its entire campus as a limited public forum."

18 So when opposing counsel says that they have to have  
19 this mission and purpose requirement in order to change the  
20 status of their campus, it's a futile effort. There is no  
21 federal court allowing a university to designate its entire  
22 campus as a limited public forum. Indeed, the Williams court  
23 says to declare the entire campus a limited public forum and to  
24 say that it's subject only to reasonableness and viewpoint  
25 neutrality, it would be anathema to the purpose of the

1 university, and so it shouldn't be allowed here either.

2           So the areas that our clients were trying to speak,  
3 like I said, open, outdoor, generally accessible areas, the  
4 areas that anybody can access at any time, those are limited --  
5 those are designated public forums for students. Any  
6 restriction there has to be narrow, it has to be  
7 content-neutral, and this policy is not. It has to be narrowly  
8 tailored to a significant governmental interest, which this  
9 policy is not. And it has to allow ample alternative means of  
10 communication, and this policy allows none. In fact, opposing  
11 counsel's suggestion: Where can students speak without a  
12 permit? Go off campus. That's not an ample alternative means  
13 of communication when your intended audience is fellow  
14 students.

15           So with -- and then the problems are highlighted by  
16 the way that opposing -- that defendants enforce these  
17 policies. Making it clear that none of them really had a clear  
18 idea as to what was required, where they could speak, when they  
19 could speak, what they had to do in order to speak. So when  
20 university officials do not even understand what the policies  
21 are, then the Williams court says that the policy is vague on  
22 its face and must be enjoined.

23           None of the other interests that they have  
24 highlighted, whether it be traffic, whether it be litter,  
25 whether it be anything else, are narrowly tailored to this --



1 these policies are not narrowly tailored to that. They don't  
2 need to ban student speech in all of campus unless you get a  
3 permit in order to prevent -- in order to make sure that  
4 students can get to classes. They already have -- in fact,  
5 they already have other policies that enable them to address  
6 these issues.

7 For example, the student code of conduct already  
8 prohibits intimidation. It already prohibits disruptive  
9 activities. It already prohibits endangerment. It already  
10 prohibits harassment. Those are all the things that they were  
11 just talking about. So they can achieve all of their  
12 legitimate interests in maintaining safety, in maintaining  
13 traffic flow on campus, and making sure that students can get  
14 to class on time without saying that students can only speak  
15 outdoors if they first get permission from school officials.  
16 Permission that, of course, can be denied for any reason  
17 whatsoever, because there is no guarantee in this policy that  
18 any request for a permit will be granted. You can satisfy all  
19 of the written criteria, you can even be consistent with KCC's  
20 mission and there's no guarantee that your request will be  
21 granted. Which is another reason that this policy is  
22 viewpoint- and content-based because it grants that unbridled  
23 discretion.

24 With that, Your Honor, I'll reserve the balance of my  
25 time.

1           *THE COURT:* All right. We'll go to Ms. Norris.  
2 Thank you.

3           *MS. NORRIS:* Your Honor, I've been in this court many  
4 times and I have a great deal of respect for your preparation.  
5 My first experience here was your very first Rule 16 conference  
6 in which you pointed out what you thought was a typo in a  
7 paragraph of my Answer, and I had to confess that I've never  
8 had a judge actually read my Answer before. So it turned out  
9 it wasn't a typo, I was right, and I was really pleased to tell  
10 you that, but the fact that you had gotten that deeply into the  
11 weeds was nonetheless impressive. So you've made it clear to  
12 me I have an uphill battle, but I would like to -- I feel  
13 strongly about my client's case, and my client feels strongly  
14 about its case, so I would like to give you some sense of why.

15           And I start by saying, as I did earlier, the question  
16 for today is not could Kellogg Community College have some  
17 other policy. Certainly there are lots of policies. We've  
18 cited many cases for you which have very similar policies.  
19 Some sort of differentiation between groups that are approved  
20 and off-site people that have no approval. Some  
21 differentiation between things that are planned and that you  
22 need to get permission for and other things. Some appeal  
23 process. Some restriction on time, place, and manner. We've  
24 cited many of those cases. So the question isn't could Kellogg  
25 Community College draft its policy to write up different

1 factors. The question is is the policy as it stands today  
2 unlawful? And I submit to you strongly that the answer is no.

3 First of all, as you well know, preliminary relief is  
4 extraordinary relief. The Sixth Circuit says no power the  
5 exercise of which is more delicate, requires greater caution,  
6 deliberation, is more dangerous in a doubtful case. That's the  
7 Detroit Newspaper Publishers case that we have cited. And the  
8 Sixth Circuit also says that while there's balancing factors,  
9 no one factor is controlling and it's not a checklist of  
10 factors. The sine qua non --

11 *THE COURT:* Let me just step aside from the factors.  
12 I mean, those are pretty well-known and basic. I can't  
13 remember, do you have a son or daughter?

14 *MS. NORRIS:* I have a daughter.

15 *THE COURT:* Okay. Say your daughter is at Kellogg  
16 Community College and she and her friends start talking about  
17 politics and discover they both like Rand Paul.

18 *MS. NORRIS:* Uh-huh.

19 *THE COURT:* And they say, "You know what, this is  
20 important. Our country has got all kinds of things going on.  
21 We've got to go out there and tell our fellow students all  
22 about Rand Paul and get them to go, you know, campaign for  
23 libertarian ideals."

24 *MS. NORRIS:* Uh-huh.

25 *THE COURT:* Under your policy they can't do that

1 without seeking the prior permission of the administration.

2 *MS. NORRIS:* I disagree depending on how you  
3 characterize go talk. And I think that our policy is here --

4 *THE COURT:* Well, campaigning. Campaigning, being on  
5 the sidewalk saying, "Hey, you know, Margaret, let me tell you  
6 about Rand Paul." That's campaigning.

7 *MS. NORRIS:* So I believe that the law holds that a  
8 university or a college or a school, unlike a public park,  
9 unlike --

10 *THE COURT:* So are you telling me you think it's okay  
11 for a university to say "That kind of spontaneous political  
12 speech can't happen without our prior permission"? You think  
13 that's constitutional?

14 *MS. NORRIS:* If what you're talking about is in the  
15 open spaces --

16 *THE COURT:* Yes.

17 *MS. NORRIS:* -- yes.

18 *THE COURT:* Okay. So what case do you rely on for  
19 that absolutely astonishing proposition in my view?

20 *MS. NORRIS:* Well, I rely on several. So, first of  
21 all, the Bloedorn versus Grube case, the Georgia Southern  
22 University case, it cites Widmar, which is the  
23 U.S. Supreme Court case, and they specifically say that a  
24 designated public forum is created only when a school opens  
25 facilities for indiscriminate use by the general public. A

1 limited public forum is when it's open for use by certain  
2 groups or dedicated solely to discussion of certain subjects.  
3 And these cases as well as the Southern case that we've cited  
4 all specifically talk about the university's mission, the  
5 importance of the university's mission. In Widmar, the  
6 Supreme Court case --

7 *THE COURT:* So do you have -- I understand there are  
8 cases that talk about what's a designated public forum, what's  
9 a limited public forum. But do you think you have any case  
10 that says it's okay for a university to flat-out prohibit what  
11 I've just described as that spontaneous student campaigning  
12 without a prior permit? We can go now on the diag at the  
13 University of Michigan. That's what the diag is all about at  
14 the University of Michigan. And I know your campus is smaller,  
15 but it's not like it's so small that a handful of students  
16 can't fit on the sidewalk and talk about common issues.

17 *MS. NORRIS:* I think that a university can have time,  
18 place, and manner restrictions for that speech.

19 *THE COURT:* I'm not talking about time, place, and  
20 manner. I'm saying -- in my hypothetical those students can't  
21 go out and start talking about the politics of Rand Paul, the  
22 politics of Barack Obama, or Donald Trump, or anybody in a  
23 campaign way or in a way to promote their views without your  
24 prior permission.

25 *MS. NORRIS:* I think the university could say if you

1 want to have that kind of speech, you can do it between  
2 these hours and these hours and this section of the campus.

3 *THE COURT:* All right. Well, even that's not asking  
4 for prior permission. Now that's different. You're saying,  
5 fine, you can't have that speech after midnight.

6 *MS. NORRIS:* Right.

7 *THE COURT:* I'm not talking about that. I'm saying  
8 without prior permission they can't go out and do that until  
9 they ask you for your permission. That's what your policy  
10 says, doesn't it?

11 *MS. NORRIS:* Right. But so do other cases that we've  
12 cited. Southern has a prior permission policy.

13 *THE COURT:* For any speech that involves students  
14 getting together spontaneously to promote some political ideal?

15 *MS. NORRIS:* Well, you're using the words "get  
16 together spontaneously." If my daughter -- who happens to be  
17 reasonably politically aware and active and went to a pretty  
18 politically aware and active school -- if my daughter wants to  
19 go to the floor below hers and talk to the women on that floor  
20 about her political beliefs, they can kick her out if they  
21 want, it's their dorm room. She is certainly welcome to go do  
22 that. And they are certainly welcome to kick her out. If she  
23 wants to sit in the library with three students sitting around  
24 chairs and they want to talk amongst themselves and they want  
25 to say "You know, we think these other people might be

1 interested," so they go talk to them and those people say  
2 "We're not interested," I think the university can prohibit  
3 them from approaching people that say --

4 *THE COURT:* Well, can they -- but the thing you're  
5 not really answering, to me anyway, your policy, I think,  
6 fairly read says they can't go out whether they are in the  
7 library or on the sidewalk and make that pitch without prior  
8 permission.

9 *MS. NORRIS:* So "solicitation" is defined in our  
10 policy.

11 *THE COURT:* Right. I mean, I have it highlighted.

12 *MS. NORRIS:* Right. "Solicitation" is defined. So I  
13 do think it includes approaching other people who may not want  
14 to be approached. I don't think it includes just the talking  
15 that you discuss.

16 *THE COURT:* So your answer is they can't do that  
17 without your prior permission.

18 *MS. NORRIS:* I think that's right.

19 *THE COURT:* And I find that an astonishing  
20 interpretation of the First Amendment. And I'm still looking  
21 for the case that says that. There's a policy that says that  
22 kind of spontaneous discussion can't happen without the prior  
23 permission of the school. I mean, that sounds like, you know,  
24 1984 to me.

25 *MS. NORRIS:* Well, the cases that I'm aware of have

1 not specifically said spontaneous discussion cannot happen, but  
2 I have cited cases, including Southern, which say that you have  
3 to have prior permission to solicit on a campus.

4 *THE COURT:* All right. But at least you're  
5 comfortable defending the policy if it applies to spontaneous  
6 discussion like that, spontaneous approach to say, "Hey, let me  
7 tell you why I love Rand Paul and you should too"?

8 *MS. NORRIS:* If it's done in the public areas that  
9 the school says you need permission to solicit in, yes, I am.

10 *THE COURT:* All right.

11 *MS. NORRIS:* I think that the policy of the school is  
12 clear about what kind of --

13 *THE COURT:* Well, the policy of the school is clear,  
14 but so is the policy of the Soviet Union in the days of the  
15 Soviet Union. It doesn't make it First Amendment-compliant.

16 *MS. NORRIS:* I think that's where we get to the  
17 mission of the school. There are schools --

18 *THE COURT:* Isn't that inherently content-generated?  
19 I mean, that gets back to that. If it's only okay to go out  
20 and talk without prior permission if you're consistent with the  
21 mission of the school, you could do that in Tiananmen Square  
22 because the government is perfectly happy to have you speak if  
23 they think you're speaking consistent with their mission, but  
24 the real test, isn't it, is when you're speaking in a way that  
25 might be contrary to what the school thinks is its mission.



1           *MS. NORRIS:* Some of the cases we've cited,  
2 Your Honor, specifically talk about you can go off the campus  
3 to do that. I think that if you're the University of Michigan,  
4 we'll call that school A for a minute, and you're Kellogg  
5 Community College, those are very different schools with very  
6 different missions. I think the University of Michigan would  
7 say that part of its mission is a residential life that  
8 includes lots of things, including perhaps exactly the kinds of  
9 discussions you're talking about. That's not Kellogg Community  
10 College's mission.

11           *THE COURT:* You don't think the campus is at least  
12 for students a designated public forum?

13           *MS. NORRIS:* No, I think it's a limited public forum.

14           *THE COURT:* So the university, in your view, or the  
15 community college, has the right to just -- as long as it's  
16 content-neutral, we can debate that -- clamp down on anything  
17 that happens, any speech by students or otherwise?

18           *MS. NORRIS:* I think you can have reasonable time,  
19 place, and manner restrictions.

20           *THE COURT:* Well, no, that's different. Reasonable  
21 time -- nobody disputes that you can have reasonable time,  
22 place, and manner. Absolutely. The question is whether once  
23 you get to the stage of saying you can't speak or solicit in  
24 the way I was describing without our prior permission, you  
25 know, you've gone beyond that to essentially prior restraint.

1 And, anyway, I'm still looking for the case. What I hear you  
2 saying is there are cases that talk about solicitation  
3 generally, nothing that you would say focuses specifically on  
4 what I'm talking about as spontaneous speech.

5 *MS. NORRIS:* I'm not aware of a case that  
6 specifically talks about spontaneous speech one way or the  
7 other, Your Honor. That's correct.

8 There is one case I would like to bring to your  
9 attention.

10 *THE COURT:* All right.

11 *MS. NORRIS:* It does not talk about spontaneous  
12 speech specifically. What it does do, though -- it's a  
13 lower-court decision, it's not controlling on this Court -- but  
14 what it does do is it talks about the several different circuit  
15 positions that have been taken and the differences in those  
16 circuits and comes to what it believes is a rational  
17 conclusion. And it's a brand-new case. It's Keister,  
18 K-E-I-S-T-E-R, versus Bell. And it's 2017 Westlaw 878403.  
19 It's a March 6th, 2017, case. And in that case what  
20 the court --

21 *THE COURT:* What jurisdiction? I'm sorry.

22 *MS. NORRIS:* It's Northern District of Alabama.

23 *THE COURT:* Thank you.

24 *MS. NORRIS:* In that case the court discussed the  
25 McGlone case, the Bloedorn case, and other circuit cases and

1 talked about the differences in them and noted that in many of  
2 those cases the space that's at issue is tangential to city  
3 streets. It's perimeter, sidewalks, that kind of space. And  
4 agreed that that sort of space would be treated differently  
5 from the internal campus space.

6 At Kellogg Community College, if you look at a map,  
7 which has been -- it's an exhibit that both parties, I think,  
8 have probably provided you -- the buildings are very close  
9 together. There's parking lot space around them and then  
10 there's open space elsewhere. The space that students want to  
11 speak is the space where students are. Makes sense. Where  
12 students are is in that closed, congested space.

13 *THE COURT:* But as the policy reads it would also  
14 apply in Parking Lot F along Roosevelt Avenue or the soccer  
15 field or anywhere else. Right?

16 *MS. NORRIS:* Well, I think the soccer field and the  
17 parking lot are a little bit different than Roosevelt Avenue.

18 *THE COURT:* Yeah, but your policy doesn't make any  
19 differentiation about that. I mean, you still need prior  
20 permission before you go to any of those locations, don't you?

21 *MS. NORRIS:* I don't think that Roosevelt Avenue  
22 would be considered just the college's space, so I don't know  
23 that that would be subject --

24 *THE COURT:* Well, your definition of campus. Not  
25 Roosevelt Avenue. You were just talking about areas along it.

1     Parking Lot F is along it, right?

2             *MS. NORRIS:* I think the school would be well-advised  
3     to prohibit -- to prohibit speech in the middle of the parking  
4     lot. I think they have got good safety reasons.

5             *THE COURT:* I'm just saying you can focus on the  
6     individual buildings that are clustered, but the policy as  
7     written applies universally to every corner of your campus. I  
8     mean, there's no place on campus where you can speak without  
9     prior permission as a student.

10            *MS. NORRIS:* Again, I quarrel with your use of the  
11     word "speak." This is a solicitation policy.

12            *THE COURT:* Well, if you're speaking in a way that  
13     promotes, campaigns ideas, political ideas, you're within  
14     solicitation, aren't you? I guess if you're speaking to say  
15     "Show me where the bathroom is" that's not covered. But if  
16     you're out there saying "We like Rand Paul, you should too,"  
17     "We like Barack Obama, you should too," talk to me about the  
18     ACA, I mean, maybe that's not what you mean by campaign, which  
19     is one of your subsets of speech or solicitation, but how do  
20     you know unless you ask? And that's the whole overbreadth  
21     problem.

22            You know, we're -- the First Amendment is supposed to  
23     be promoting the expression of ideas, not restricting and  
24     chilling. And I'm saying the breadth of the definition of  
25     "solicit" certainly seems to cover all those kinds of

1 expressions and political ideas that are designed to draw  
2 somebody else to your point of view.

3 *MS. NORRIS:* That's assuming that that's what Kellogg  
4 Community College wants to support. What Kellogg Community  
5 College is trying to do is educate students who are  
6 primarily -- none of them are residential students. The  
7 students are often working, raising families. They are not 18-  
8 to 22-year-olds who are looking for a significant co-curricular  
9 experience outside of the classroom. Many schools that's as  
10 much a part of what you pay for as the classroom. That's not  
11 Kellogg Community College's mission. Its mission is its  
12 community and its community is different from a large  
13 university.

14 So it would be against the law, I agree, for Kellogg  
15 Community College to say it matters whether you're campaigning  
16 for Rand Paul or Bernie Sanders. That would be against the  
17 law. It would be against the law to say you can't have  
18 political speech but you can have fundraising for the March of  
19 Dimes speech. That would be against the law. It doesn't do  
20 any of those things. It doesn't do any of those things. What  
21 it says is we're going to restrict when and where and how  
22 people have something that's not the conversation with the  
23 roommate, that's not the conversation over the lunch table --

24 *THE COURT:* Let me ask you, is soliciting funds for  
25 contributions to Kellogg Community itself consistent with the

1 mission?

2 *MS. NORRIS:* You mean Kellogg Community College  
3 raising money?

4 *THE COURT:* Yeah. Like if students want to go out  
5 and say "We love Kellogg Community College, you should  
6 contribute to it," that you would say is consistent with your  
7 mission?

8 *MS. NORRIS:* I think if students were fundraising on  
9 the campus --

10 *THE COURT:* Well, what if they are fundraising for  
11 Kalamazoo Valley Community College?

12 *MS. NORRIS:* I think if they were fundraising for  
13 either one on the campus, they would be subject to the policy.

14 *THE COURT:* Either one?

15 *MS. NORRIS:* Yeah. I don't think it matters if it's  
16 for us or for somebody else. I would agree that that would be  
17 treated the same.

18 *THE COURT:* All right.

19 *MS. NORRIS:* Right. I mean, I understand --

20 *THE COURT:* What if you're fundraising for an  
21 organization that's against community colleges or public  
22 education?

23 *MS. NORRIS:* I think if you're content-neutral,  
24 you're content-neutral.

25 *THE COURT:* And that's consistent with the mission of

1 the university?

2 *MS. NORRIS:* I think their mission -- as some of the  
3 cases we've cited say -- including the Widmar case -- the  
4 purpose of a college isn't necessarily speech, whereas the  
5 purpose of having a public area like a park may be speech. The  
6 purpose -- the primary purpose of Kellogg Community College is  
7 to educate its students, and it gets to decide how it thinks  
8 that's best done. And if --

9 *THE COURT:* So let me just read, "Soliciting  
10 activities on campus are permitted only when the activities  
11 support the mission of Kalamazoo" -- or I'm sorry -- "of  
12 Kellogg Community College or the mission of a recognized  
13 college entity or activity." And I know it later says we're  
14 not looking at the content. But how do you understand that  
15 sentence in a way that doesn't look at content? I mean, how  
16 can you support the mission of Kellogg Community College or not  
17 apart from the content of the speech?

18 *MS. NORRIS:* Well, the stated purpose of the policy I  
19 indicated earlier.

20 *THE COURT:* No, no, but how do you interpret that  
21 sentence? I mean, you told me earlier that that meant it  
22 involved, you know, basically crowd control.

23 *MS. NORRIS:* Right. Which is what the policy says.

24 *THE COURT:* But that sentence "Soliciting activities  
25 are permitted only when the activities support the mission of

1 Kalamazoo Community College [sic]" and you're saying there's no  
2 content at all involved in that?

3 *MS. NORRIS:* Right. So the stated purpose of the  
4 policy -- I mean, I realize you don't think this is sufficient  
5 and you're the judge, but the stated --

6 *THE COURT:* So you could delete that sentence and  
7 have the same policy because elsewhere you talk about crowd  
8 control?

9 *MS. NORRIS:* That's -- in settlement discussions we  
10 discussed that, Your Honor. But there were other things we  
11 discussed in settlement discussions that were not acceptable to  
12 us that have nothing to do with the content of the policy.

13 *THE COURT:* All right.

14 *MS. NORRIS:* The stated purpose of the policy is to  
15 ensure an atmosphere conducive to learning, reasonable conduct  
16 of business, unobstructed access to the college for its  
17 students, faculty, employees, occupants, the public, and  
18 maintenance of the grounds. Those are legitimate purposes.  
19 And they are stated. They are not in someone's mind. They are  
20 not, you know, subject to the whim of somebody. Those are the  
21 stated purposes of the policy.

22 The mission, which is on our website, which we've  
23 cited for you, talks about it's to educate people. That's the  
24 mission. And how Kellogg Community College chooses to do that  
25 is up to the college so long as it does not prohibit speech on



1 the basis of content. And there's simply no evidence here that  
2 it does.

3 *THE COURT:* You know Mao Tse-tung said the same thing  
4 in the cultural revolution, right? I mean, isn't that the big  
5 problem? That, you know, we can talk in generic generalities  
6 about promoting education and all of that. I mean, that's what  
7 the cultural revolution said too. The problem is putting that  
8 in the hands of government as opposed to the governed. I mean,  
9 that's what the First Amendment is all about. And here the  
10 governed, the students, only get to say things out loud,  
11 campaign, if the government first says okay.

12 *MS. NORRIS:* So if a student decided that they are  
13 going to solicit for a credit card company and every student  
14 that walked into the student center, you know, got greeted by  
15 somebody who is trying to solicit for a credit card company,  
16 it's your position that the college would have no ability to  
17 stop that?

18 *THE COURT:* I didn't say that. I'm saying --

19 *MS. NORRIS:* But I don't see the difference.

20 *THE COURT:* Well, then you can make that argument.  
21 And you can write a policy that addresses that concern instead  
22 of saying all prior speech has to be approved and allowed by  
23 us. No speech until we approve it, you know, if it falls  
24 within the definition of solicitation. I mean, that's the  
25 problem from my perspective. You may have very legitimate

1 interests at all kinds of edges of both traffic control, crowd  
2 control, safety, and maybe other things as well. Commercial  
3 advertising. But the policy isn't written in that way. It's  
4 written to cover all solicitation. And that includes core  
5 First Amendment speech. Political speech. I mean, core. And  
6 I just find it astonishing that the government gets to say in  
7 advance before students spontaneously get together and talk  
8 about politics in a way that tries to persuade their fellow  
9 students that the government gets to say yes or no first. That  
10 strikes me as incredible.

11 *MS. NORRIS:* I suppose -- I obviously disagree with  
12 your comparisons to China and the Soviet Union, but I suppose  
13 it's certainly true that any policy, no matter how worded, the  
14 proof of the pudding is in the implementation of the policy.  
15 And --

16 *THE COURT:* Generally. But in First Amendment the  
17 overbreadth analysis says we're so concerned about chilling  
18 speech that when you have a policy that could tread on the  
19 perimeter, you know, the policy falls. That precision is so  
20 important, you know. So I think in First Amendment context  
21 that's a qualified statement.

22 *MS. NORRIS:* But the cases -- there are actually  
23 cases, and we've cited them, which say -- there was one where a  
24 preacher -- a number of these cases involve evangelists -- and  
25 there was one where a preacher was concerned about the policy,

1 wasn't clear -- he thought it was overly broad, wasn't clear  
2 whether he would be allowed to speak under that policy. So he  
3 wrote a letter and asked if he would be allowed to speak. And  
4 he got a letter back and the answer was, "Yes, this day, this  
5 time, you can speak to your heart's content." And so he then  
6 made the overbreadth argument, and the court said, no, he had  
7 no reason to believe it was overly broad. These plaintiffs in  
8 this case --

9 *THE COURT:* Well, the preacher is not a student in  
10 that case.

11 *MS. NORRIS:* Well, interestingly, the one student who  
12 was a student has not signed an affidavit regarding irreparable  
13 harm, is not here, and was not at the mandatory settlement  
14 conference. So the student that has been --

15 *THE COURT:* He was the one who left before the others  
16 got arrested?

17 *MS. NORRIS:* Correct. But the others were not  
18 students.

19 *THE COURT:* Well, the one has been a student before  
20 and after and was part of the group that was trying to get  
21 student recognition.

22 *MS. NORRIS:* To say that she was a student after is  
23 to fast forward history. At the time these decisions were  
24 made, she was a former student of the community college. She  
25 had taken classes and now she was not taking classes and she

1 was not a student.

2           So I think that it does matter that these plaintiffs  
3 here tried the policy and were granted permission under the  
4 policy. Michelle Gregoire applied for permission to speak, to  
5 solicit, was allowed to solicit, and simply didn't feel that it  
6 was effective enough. And she wasn't banished to the  
7 hinterlands of the campus. She wasn't banished to where there  
8 were no students. She was allowed to solicit in the student  
9 center, the busiest, most desirable place to solicit. She was  
10 allowed to solicit there and it wasn't good enough. So they  
11 intentionally -- they weren't denied permission at any time.  
12 And on the day in question they were told multiple times, you  
13 know, "We're not -- we treat everybody else this way. We're  
14 not going to treat them differently. You have to go sign up.  
15 You sign up and you can stand out here and do this. Here are  
16 the places you can do it." And they chose not to do that.

17           So I don't think this is an overbreadth issue. I  
18 don't think this is an interpretation-of-the-policy issue.  
19 They knew exactly what the policy was. They knew exactly how  
20 the policy worked. They had been granted permission under the  
21 policy. And they chose not to do that here.

22           My family is pretty politically active. My father  
23 was thrown in jail for civil disobedience. One of the  
24 ramifications of civil disobedience is exactly that. If you  
25 want to bring attention to your cause, there are ways to do

1 that that include breaking the law, but then you pay the  
2 penalty.

3 *THE COURT:* But the difference between most civil  
4 disobedience cases is things like blocking a doorway, occupying  
5 an office, versus standing on a sidewalk.

6 *MS. NORRIS:* Well, he was arrested in Selma, Alabama,  
7 for standing on a sidewalk.

8 *THE COURT:* But here people were arrested for  
9 standing on the sidewalk passing out Constitutions without  
10 prior permission of the university.

11 *MS. NORRIS:* Right. They were arrested for  
12 soliciting people without permission and they don't want to pay  
13 the penalty for that.

14 My father did not sue the state of Alabama. He was  
15 well-informed about what he was doing.

16 *THE COURT:* That's because the prosecutor dismissed  
17 the charge, right? Because the prosecutor wasn't going to  
18 argue to a jury or a judge that passing out Constitutions  
19 violates the criminal law. I mean, isn't that really --

20 *MS. NORRIS:* We can have a discussion about what  
21 motivates a prosecutor at that time and that place. I  
22 disagree. But it is our position that the college has the  
23 ability to manage where the people are and manage how the  
24 people interact with the people who are trying to take the  
25 classes. Not on a content-based. Not on which side of the

1 thing you're on. Not on whether it's political or not  
2 political. Not on any content-based, but simply on a how you  
3 approach our students who are trying to get their education.  
4 And I think they have the permission -- the authority to do  
5 that. I have not seen any law that says that they can't do  
6 that.

7 *THE COURT:* Okay. Nobody has talked about this  
8 aspect of the policy that I recall, but to me it underscores  
9 the breadth of what Kellogg Community College is trying to do  
10 on speech. And it's Part 4, the off-campus solicitation. So  
11 if you get to be a recognized college entity and you desire to  
12 conduct solicitation off-campus, you first have to coordinate  
13 with the government too. Seriously?

14 *MS. NORRIS:* If you're doing it under the auspices of  
15 the campus, yes.

16 *THE COURT:* So the price is if you want to become  
17 recognized, you can't even take your group, you can't take  
18 students or whatever this group is into the coffeehouse  
19 downtown without first getting the permission of the  
20 government.

21 *MS. NORRIS:* I have not asked them any questions  
22 about how that's been enforced.

23 *THE COURT:* No, I'm not talking about how it's  
24 enforced. I'm talking about how it's written. I mean, that's  
25 how it's written, right? You have to coordinate -- must

1 coordinate those activities with a student life office prior to  
2 commencing the activities.

3 *MS. NORRIS:* If you're acting as a student group  
4 under the banner of the college.

5 *THE COURT:* Well, under the banner of the student  
6 group, right?

7 *MS. NORRIS:* Yes, but it's a Kellogg Community  
8 College student group. It's not -- it's not --

9 *THE COURT:* Doesn't that just strike you -- I mean,  
10 do you really want this in the press? Come to Kalamazoo -- or  
11 to Kellogg Community College because you can't speak about  
12 politics until we give you permission on or off campus? That  
13 just strikes me as an astonishing position for a college to  
14 take.

15 *MS. NORRIS:* I think the position is we want you to  
16 come to Kellogg Community College because you can get done here  
17 what you need to get done while you have jobs and other things  
18 that people at large universities usually don't have to deal  
19 with. The students here -- there's a reason why there's not a  
20 lot of success soliciting in the student hall, because that's  
21 not where the students usually want to be. They want to get  
22 their work done and get home or get to their jobs. And I think  
23 the college is allowed to give them that environment.

24 And we can argue about whether that's a good mission  
25 or a bad mission, but it's a mission that the college has

1 chosen, and I think they are allowed to do that.

2 *THE COURT:* Okay. Thank you.

3 Any rebuttal?

4 *MR. BARHAM:* Briefly, Your Honor. Your Honor  
5 repeatedly asked for precedent allowing a university to impose  
6 such a broad prior restraint on student speech, and opposing  
7 counsel failed to cite one single case dealing with student  
8 speech. Bloedorn is an Eleventh Circuit case dealing with an  
9 off-campus street preacher. The Keister case that she cited  
10 from the Northern District of Alabama, also a street preacher  
11 case. Neither of which dealt with students.

12 Here we are before this Court on a preliminary  
13 injunction. There is no question that one of -- that the  
14 policy was applied to students in September of 2016 when  
15 Mr. Withers was threatened with arrest. There's no question  
16 that Mrs. Gregoire is going to be a student -- was a student  
17 this past spring, is going to be a student this fall, and will  
18 be subject to the policy.

19 Your Honor also asked for precedent where a  
20 university was allowed to say that you must support our mission  
21 in order to speak on campus. Sure, there's language in court  
22 cases talking about a school's educational mission, but there  
23 is no case -- and opposing counsel cited to none -- allowing a  
24 university to say that students must support the mission of the  
25 college or the university in order to speak on campus.



1           Opposing counsel indicated that -- disputed the  
2 definition of spontaneous speech. Well, in an era where news  
3 is being driven by tweets, it is imperative that students be  
4 allowed to speak spontaneously, otherwise their speech will  
5 lose its effectiveness. There's a case out of Colorado cited  
6 in our brief that talks about how the timing of speech is a  
7 fundamental First Amendment value.

8           Opposing counsel indicated that defendants are trying  
9 to confine student speech to the area that they think is the  
10 most desirable. And that gets to one of the fundamental issues  
11 in this case. They have set the entire outdoor areas of campus  
12 off-limits to student speech and have instead limited that to  
13 information tables inside the student center. Well, defendants  
14 don't get to decide what is the most desirable spot for student  
15 speech. That is a matter that an individual student speaker  
16 can make a value judgment as to what's in the best interests of  
17 their group. So if they want to speak in the open, generally  
18 accessible areas of campus, the areas that are unquestionably  
19 designated public forum, then unless they are violating a  
20 policy that's narrowly tailored to a significant governmental  
21 interest, they have the right to do so.

22           And that's the fundamental disconnect between the law  
23 and defendant's mind-set of here are the places where you can  
24 speak. No. In the designated -- in the public outdoor areas  
25 of campus, the areas where our students want to speak, that's

1 where the law says they get to speak. Roberts versus Haragan  
2 says it's the irreducible public forum areas that must be open  
3 to student speech. The university can designate more, but they  
4 can't designate less.

5 This case is so -- the -- opposing counsel questioned  
6 Mr. Withers. Mr. Withers has provided an affidavit. That's  
7 called a verified complaint. And so he has provided testimony  
8 here. And there's no question that he was a student, that he  
9 was trying to speak when he was threatened with arrest, which  
10 is the classic First Amendment legal injury.

11 Opposing counsel -- Your Honor mentioned the  
12 components of the policy that require KCC's permission in order  
13 to solicit off-campus, and opposing counsel said, "Yes, if  
14 you're operating under the auspices of KCC, that's what's  
15 required." Well, the only problem with that is the Rosenberger  
16 case from the Supreme Court made it clear that student  
17 organizations are not arms of the college or university with  
18 which they are affiliated. They are private entities. And so  
19 there's no way for the university to say, "Well, you're  
20 speaking on our behalf and, therefore, we can control your  
21 speech even off-campus."

22 The other examples that opposing counsel has provided  
23 of restrictions that would be potentially problematic such as  
24 students trying to speak in the library or in the dorm or in  
25 the student hall, not applicable to this case because in this

1 case what we're trying to do is speak on the sidewalk. Speak  
2 in the outdoor areas of campus. And, therefore, Your Honor, we  
3 would request that this Court issue an injunction modeled after  
4 the one issued by the Williams court invalidating the speech  
5 permit and speech zone policies challenged here and prohibiting  
6 KCC officials from imposing any restrictions that are not  
7 narrowly tailored to a significant governmental interest on  
8 student speech in the public outdoor areas of campus.

9 *THE COURT:* What's your position in this case or  
10 organizationally on commercial solicitations like the credit  
11 card offer hypothetical Ms. Norris puts?

12 *MR. BARHAM:* I believe, Your Honor, that there is  
13 authority allowing a university to impose a different set of  
14 requirements on commercial solicitation. And in fact, most of  
15 the universities that I have looked into, they have a separate  
16 policy for commercial solicitation, or they define solicitation  
17 only to apply to commercial sorts of transactions. That's one  
18 of the notable aspects of this policy is that it is so broad.  
19 The definition of "solicitation" covers so much protected  
20 speech that has no bearing whatsoever on commercial  
21 transactions.

22 *THE COURT:* And then the March case, the Keister  
23 against Bell, do you know the case and do you have any position  
24 on it one way or the other today?

25 *MR. BARHAM:* I am not intimately familiar with the

1 case, Your Honor, but from what we were able to gather just  
2 sitting at counsel table just now, it also involves an  
3 off-campus street preacher and, therefore, is not determinative  
4 of the kind of forum or the types of restrictions that are  
5 permissible on student speech. Instead the most directly  
6 on-point case is that Williams case dealing with, you know,  
7 another chapter of Young Americans for Liberty that was facing  
8 similar, if not identical, policy restrictions and where they  
9 were subject to the same threats of arrest that were actually  
10 carried out against our students.

11 *THE COURT:* Okay. Thank you.

12 *MR. BARHAM:* Thank you, Your Honor.

13 *THE COURT:* Ms. Norris, I'll give you five minutes to  
14 be uninterrupted and give me your best hold. Okay?

15 *MS. NORRIS:* I won't take that long, Your Honor.  
16 Just a few things. I'll start with where you just finished.  
17 There is nothing that would say that a student -- if  
18 plaintiffs' position is to be granted, there's nothing to say  
19 that commercial speech could be treated differently. If it's  
20 an active student, an active student wants to solicit for a  
21 credit card company, you know, to make some money on the side  
22 or whatever it is, there's nothing that would prohibit them  
23 from doing that. And even plaintiffs acknowledge that kind of  
24 speech might not be as valuable as the kind of speech they are  
25 talking about. Well, the minute you start talking about what

1 speech is valuable or not valuable, we're on the slippery slope  
2 that you decry.

3 Kellogg Community College is not having at the core  
4 of its mission speech in public places. Any kind of speech in  
5 public places. And it does not need to open itself up to that  
6 if it chooses not to do so.

7 The Southworth case, you can certainly read it, you  
8 probably have, but it specifically talks about the dangers of  
9 misinterpretation, or, you know, if you're not sure how a  
10 policy is going to be implemented, those sorts of things. And  
11 it talks about exact kinds of safeguards that the Kellogg  
12 policy has. Appeals process, those sorts of things. So that  
13 if there is abuse in the kind of, you know, Soviet or Chinese  
14 way that you have suggested, that there are remedies for that  
15 abuse baked into the policy.

16 And finally, time, place, and manner restrictions do  
17 matter. It's plaintiffs' position that defendant doesn't get  
18 to decide where speech can occur. And we've cited a great deal  
19 of law on that issue. I'd urge you to look specifically at the  
20 university cases that we've cited because they do talk about a  
21 different kind of public forum than the sorts of forums that  
22 have been talked about in a number of the other cases cited by  
23 plaintiffs. Unless you have other questions, that's all I  
24 have.

25 *THE COURT:* Okay. No. Thank you.

1           MR. BARHAM: Your Honor, may I respond briefly?

2           THE COURT: All right.

3           MR. BARHAM: The Southworth case does not control  
4 here in the sense that that was dealing with a student  
5 fee-funding forum, it was a limited public forum, and,  
6 therefore, is different than the designated public forums of  
7 the outdoor areas of campus. And the appeals process there was  
8 set forward with specific tight deadlines. Here there is no  
9 deadline. In fact, that's another of the problems with this  
10 prior restraint. There is no deadline on any decisions. The  
11 decisions must be made "as promptly as possible," to quote the  
12 policy. Well, as promptly as possible is not the brief  
13 specified time restriction that Freedman and the other prior  
14 restraint cases require. And there's a reason that KCC  
15 professors do not require students to submit work as promptly  
16 as possible but instead impose an actual specified deadline.  
17 So unless Your Honor has further questions, thank you.

18           THE COURT: All right. Thank you both. We'll take  
19 it under advisement and issue a written opinion.

20           THE CLERK: All rise, please. Court is adjourned.

21           *(Proceeding concluded at 4:33 p.m.)*

22                           \* \* \* \* \*

23           I certify that the foregoing is a correct transcript  
24 from the record of proceedings in the above-entitled matter.

25           I further certify that the transcript fees and format

1     comply with those prescribed by the court and the Judicial  
2     Conference of the United States.

3  
4     Date:   August 9, 2017

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6                                 /s/ Glenda Trexler

7                                 Glenda Trexler, CSR-1436, RPR, CRR  
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